

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TREVIS CALDWELL,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:09CV80
(Judge Keeley)

HARLEY G. LAPPIN, MR. ROBINSON,
JAMES CROSS, DELBERT SAUERS,
JOE DRIVER, SALAMI, UNKNOWN
NAMED CASE MANAGER, UNKNOWN
NAMED CAPTAIN, UNKNOWN NAMED
SIS LIEUTENANT AND THE FEDERAL
BUREAU OF PRISONS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On June 16, 2009, the pro se plaintiff, Trevis Caldwell ("Caldwell"), filed a civil rights complaint against defendants Harley G. Lappin ("Lappin"), Mr. Robinson ("Robinson") and James Cross ("Cross"), pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) (authorizing suits against federal employees in their individual capacities) ("Bivens complaint"), alleging a violation of his constitutional rights by federal employees. (Dkt. no. 1). On August 28, 2009, Caldwell amended his Bivens complaint to include other defendants. (Dkt. no. 18). The Court referred the case to United States Magistrate Judge David J. Joel for initial screening and a report

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and recommendation in accordance with 28 Local Rule of Prisoner Litigation 83.09 and Local Standing Order No. 3.

On October 28, 2009, Magistrate Judge Joel issued a Report and Recommendation ("R&R") that recommended:

1) all claims against defendants Robinson, Delbert Sauers, and Salami be dismissed for lack of personal jurisdiction;

2 all claims against the defendant Federal Bureau of Prisons be dismissed with prejudice;

3) the individual capacity claims against defendants Lappin and Cross be dismissed with prejudice, but that those defendants be made to answer the complaint as to any claims against them in their official capacity;

4) all claims against defendant Unknown Named Captain be dismissed without prejudice for failure to state a claim for which relief may be granted; and, finally,

5) all claims against defendants Joe Driver, Unknown Named Manager, and Unknown Named SIS Lieutenant be allowed to proceed and that those defendants be served with a copy of a sixty (60) day summons and the complaint through the United States Marshal Service. (Dkt. no. 33). Additionally, Magistrate Judge Joel's R&R specifically warned Caldwell that failure to object to the R&R within ten days of receipt of the R&R would result in the waiver of any appellate rights on these issues.

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In reviewing a magistrate judge's R&R, the Court reviews de novo any portions of the R&R to which a specific objection is made, 28 U.S.C. § 636(b)(1), but may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). To date, Caldwell has filed no objections in response to Magistrate Judge Joel's R&R and the time for doing so has expired.¹

Therefore, as there are no objections to the R&R, the Court **ADOPTS** the R&R in its entirety and **ORDERS** as follows:

- 1) **DISMISSES WITHOUT PREJUDICE** defendants Mr. Robinson, Delbert Sauers, and Salami;
- 2) **DISMISSES WITH PREJUDICE** defendant Federal Bureau of Prisons;
- 3) **DISMISSES WITH PREJUDICE** any individual capacity claims against Harley Lappin and James Cross, but **ORDERS** that those defendants be **MADE TO ANSWER** the complaint as to any official capacity claims;
- 4) **DISMISSES WITHOUT PREJUDICE** defendant Unknown Named Captain; and

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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5) **DIRECTS** the Clerk of Court to **SERVE** a copy of the Amended Complaint (dkt. no. 18) and a sixty (60) day summons on Joe Driver, Unknown Named Manager, and Unknown Named SIS Lieutenant.

It is so **ORDERED**.

The Court directs the Clerk to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested.

Dated: January 28, 2010

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE